

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Steven Yarrito,

Petitioner,

V.

Charles L. Ryan,

Respondent.

No. CV-17-03034-PHX-JJT (DKD)

ORDER

At issue is the Report and Recommendation (“R&R”) (Doc. 18) entered in this matter by United States Magistrate Judge David K. Duncan, recommending the Court deny and dismiss with prejudice the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.¹ (Doc. 1.) Petitioner timely filed Objections to that R&R. (Doc. 20.) Upon consideration of the above filings, the Court will adopt the R&R in whole, overrule the Objections, and deny the Petition.

Judge Duncan's conclusion that all four claims of ineffective assistance of counsel in the Petition are barred, and the reasoning underlying that conclusion, is correct in all regards. None of the claims were exhausted before the state court, and now they are procedurally barred at that court. Nor has Petitioner demonstrated the cause or prejudice necessary to excuse his default. In his Objections, Petitioner simply re-presents his

¹ The day after Judge Duncan's R&R was entered onto the docket, Petitioner, who had not yet seen the R&R, filed a Motion Requesting Status of his Petition. (Doc. 19.) This Order wholly resolving the Petition, the Court will deny Petitioner's Motion for Status as moot.

1 ineffective assistance arguments on the merits, avoiding entirely the default issue that the
2 Court must first clear before even getting to those merits.

3 IT IS ORDERED overruling Petitioner's Objections to the R&R. (Doc. 20.)

4 IT IS FURTHER ORDERED adopting in whole the R&R submitted by Judge
5 Duncan in this matter. (Doc. 18.)

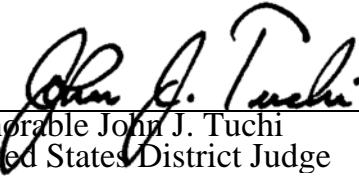
6 IT IS FURTHER ORDERED denying and dismissing the Petition for Writ of
7 Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.)

8 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to
9 proceed in forma pauperis on appeal, because the dismissal of the Petition is justified by a
10 plain procedural bar and reasonable jurists would not find the procedural ruling debatable,
11 and because Petitioner has not made a substantial showing of the denial of a constitutional
12 right.

13 IT IS FURTHER ORDERED denying as moot Petitioner's Motion for Status. (Doc.
14 19.)

15 The Clerk of Court shall enter judgment accordingly and terminate this matter.

16 Dated this 12th day of December, 2018.

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19 Honorable John J. Tuchi
United States District Judge

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